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Jaynes Corporation of California

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BRANDON DURAN and BYRON  
PEDROZA, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

CHALLENGER SHEET METAL,  
INC., a California corporation;  
THE AUGUSTINE COMPANY,  
a California corporation  
ECHO PACIFIC CONSTRUCTION,  
INC., a California corporation  
JAYNES CORPORATION OF  
CALIFORNIA, a California  
corporation  
and DOES 1-750

Defendants.

CASE NO: **'10CV2643 DMS BGS**

NOTICE OF REMOVAL OF  
DEFENDANTS CHALLENGER  
SHEET METAL, INC., THE  
AUGUSTINE COMPANY, ECHO  
PACIFIC CONSTRUCTION, INC.,  
AND JAYNES CORPORATION OF  
CALIFORNIA

Complaint Filed: November 22, 2010  
Trial Date: Not Set

PLEASE TAKE NOTICE that Defendants Challenger Sheet Metal, Inc.  
("Challenger"), The Augustine Company ("Augustine"), Echo Pacific  
Construction, Inc. ("Echo"), and Jaynes Construction Company of California  
("Jaynes") (collectively "Defendants"), and each of them, hereby remove to this  
Court the state court action known as *Brandon Duran and Byron Pedroza,*  
*individually and on behalf of all others similarly situated v. Challenger Sheet*

NOTICE OF REMOVAL OF DEFENDANTS CHALLENGER SHEET METAL, INC., THE  
AUGUSTINE COMPANY, ECHO PACIFIC CONSTRUCTION, INC., AND JAYNES  
CORPORATION OF CALIFORNIA

1 *Metal, Inc., The Augustine Company, Echo Pacific Construction, Inc., Jaynes*  
2 *Corporation of California, and DOES 1 through 750, inclusive, San Diego*  
3 *County Superior Court Case No. 37-2010-00104552-CU-OE-CTL. The grounds*  
4 *for removal are set forth below.*

5 REMOVAL JURISDICTION

6 1. On November 22, 2010, a civil action was commenced by the filing  
7 of a complaint in the Superior Court of the State of California in and for the  
8 County of San Diego ("Complaint"). The state court action is entitled *Brandon*  
9 *Duran and Byron Pedroza, individually and on behalf of all others similarly*  
10 *situated v. Challenger Sheet Metal, Inc., The Augustine Company, Echo Pacific*  
11 *Construction, Inc., Jaynes Corporation of California, and DOES 1 through 750,*  
12 *inclusive, and was assigned San Diego Superior Court Case No. 37-2010-*  
13 *00104552-CU-OE-CTL.*

14 2. A copy of the Complaint is attached as Exhibit "A." No amended  
15 complaint has been filed or served upon any of the Defendants. Attached as  
16 Exhibit "B" is a copy of the state court summons in the state court action.  
17 Attached as Exhibit "C" is a copy of the Civil Case Cover Sheet. No other  
18 papers have been filed in the San Diego County Superior Court or served upon  
19 any of the Defendants.

20 3. The San Diego County Superior Court is within the geographic  
21 jurisdiction of the United States District Court for the Southern District of  
22 California. Therefore, removal to this Court is proper under 28 U.S.C. § 1441(a).

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1 which Plaintiffs base some of their claims for relief occurred, if at all, on Camp  
2 Pendleton, a federal enclave.

### 3 TIMELINESS OF REMOVAL

4 6. Defendants Challenger, Jaynes, Echo, and Augustine were served  
5 with the Complaint and Summons on December 20, 2010, and not earlier. This  
6 Notice of Removal was therefore timely filed. Removal is timely under 28  
7 U.S.C. § 1446(b). *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.  
8 344, 347-348, 119 S. Ct. 1322, 1325-1326, 143 L. Ed.2d 448 (1999).

### 9 JOINDER IN REMOVAL

10 7. Defendants Challenger, Augustine, Echo, and Jaynes, and each of  
11 them, join in the removal of this action. It is not necessary for DOES 1 through  
12 750, or any of them, to join in this removal as they have been sued under  
13 fictitious names, have not been served or received the Complaint or summons,  
14 and under 28 U.S.C. § 1441 are disregarded for purposes of removal.

### 15 THE PARTIES AND BASIS FOR REMOVAL

16 8. In 1939, California consented to allow the United States to acquire  
17 by purchase or condemnation any tract of land within California for the purpose  
18 of erecting forts or other needful buildings. Cal. Stats. 1939, ch. 710, § 1, p.  
19 2231. In 1942 and 1943, the United States acquired Camp Pendleton through  
20 eminent domain actions. A certified copy of the letter dated September 8, 1943,  
21 from James Forrestal, Under Secretary of the Navy, to Earl Warren, California's  
22 governor, is attached as Exhibit "D." Camp Pendleton has been a federal enclave  
23 continuously from 1943 to the date of the filing of this notice. *Stiefel*, 497  
24 F.Supp. 2d at 1144-45.

25 / / / /



1           9.     Challenger is a California corporation with its principal place of  
2 business located in San Diego, California. Between December 2006 and 2010,  
3 Challenger entered into public works contracts with general construction  
4 contractors to perform work on projects owned by the United States federal  
5 government at Camp Pendleton. Duran, Pedroza, and putative class members  
6 worked on those Camp Pendleton projects. While paragraph 16 of the Complaint  
7 lists certain projects on which it alleged work was performed, the Complaint is  
8 not limited to those projects and includes within its broad allegations the Camp  
9 Pendleton projects.

10           10.    The Complaint further alleges the following in paragraph 36:  
11 “Plaintiffs seek to represent the class of all sheet metal workers who performed  
12 work for Challenger between November 22, 2006 and the present.” Similarly,  
13 proposed subclasses in the Complaint include sheet metal workers who  
14 performed work for Challenger on public works projects between November 22,  
15 2006, and the present. Challenger performed work on Camp Pendleton, a federal  
16 enclave, between December 2006 and the present. Duran and Pedroza both  
17 worked for Challenger on Camp Pendleton during this time period. Thus,  
18 Duran’s and Pedroza’s claims and the proposed class claims include work on a  
19 federal enclave.

20           11.    Accordingly, some of the alleged wrongful acts took place, if at all,  
21 on Camp Pendleton, a federal enclave. This Court has original subject matter  
22 jurisdiction over such claims and the Complaint is removable. *Durham v.*  
23 *Lockheed Martin Corp.*, 445 F.3d 1247, 1249-50 (9th Cir. 2006). Only state laws  
24 in effect at the time of cession or transfer of jurisdiction of the property in  
25 question can continue in operation on a federal enclave. *Stiefl*, 497 F.Supp.2d  
26 at 1147. Each claim for relief in the Complaint is based upon statutes,

1 regulations, and laws of the State of California that either did not exist at the time  
 2 Camp Pendleton became a federal enclave or which conflict with the federal law  
 3 that applies to the enclave. Therefore, each claim for relief alleged in the  
 4 Complaint is barred by the federal-enclave doctrine to the extent that the claims  
 5 relate to work performed on Camp Pendleton or any other federal enclave.  
 6 *Mersnick v. USProtect Corp.*, 2006 WL 3734396 (N.D. Cal. Dec. 18, 2006);  
 7 *Stiefl, supra*.

8 12. Not only does this Court have removal or original jurisdiction over  
 9 the claims for relief in the Complaint, this Court also has supplemental  
 10 jurisdiction over such claims under 28 U.S.C. § 1367 in that such claims are so  
 11 related to claims as to which original or removal jurisdiction does exist that they  
 12 form part of the same case or controversy under Article III of the United States  
 13 Constitution. Such claims are removable under 28 U.S.C. § 1441(c).

14 DATED: December 22, 2010

Respectfully submitted,

15 MARKS, GOLIA & FINCH, LLP

17 By: /s/ Mark T. Bennett

18 MARK T. BENNETT

JEFFREY B. BAIRD

19 CHAD T. WISHCHUK

20 Attorneys for Challenger Sheet Metal,  
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 Pacific Construction, Inc., and Jaynes  
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26 1143.004/30P9448.bdp

INDEX OF EXHIBITS

<u>EXHIBIT No.:</u>	<u>DESCRIPTION</u>	<u>PAGE No.:</u>
Exhibit "A"	Class Action Complaint For Unfair Business Practices, Violations of Labor Code, Injunctive Relief, and Attorneys Fees	DFTS000007– DFTS000030
Exhibit "B"	State Court Summons	DFTS000031
Exhibit "C"	Civil Case Cover Sheet	DFTS000032– DFTS000033
Exhibit "D"	Certified Copy of letter dated September 8, 1943 from James Forrestal, Under Secretary of the Navy, to Earl Warren, California's Governor	DFTS000034– DFTS000039

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 22nd day of December 2010 and is available for viewing and downloading to the ECF registered counsel of record. This also certifies that on this 22st day of December 2010, a true and correct copy of the within document was forwarded via U.S. Mail, postage prepaid, to the following counsel of record:

Via Electronic Service/ECF and U.S. Mail, postage prepaid:

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DATED: December 22, 2010

MARKS, GOLIA & FINCH, LLP

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# **EXHIBIT “A”**

**EXHIBIT “A”**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**SAN DIEGO COUNTY**

BRANDON DURAN and BYRON  
PEDROZA, individually and on behalf of  
all others similarly situated,

PLAINTIFFS,

vs.

CHALLENGER SHEET METAL, INC.,  
THE AUGUSTINE COMPANY, ECHO  
PACIFIC CONSTRUCTION, INC.,  
JAYNES CORPORATION OF  
CALIFORNIA, and DOES 1-750,

DEFENDANTS.

**CLASS ACTION**

**CASE NO.: 37-2010-00104552-CU-OE-CTL**

**CLASS ACTION COMPLAINT FOR  
UNFAIR BUSINESS PRACTICES,  
VIOLATIONS OF LABOR CODE,  
INJUNCTIVE RELIEF, AND ATTORNEYS  
FEES**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

PLAINTIFFS BRANDON DURAN ("DURAN") and BYRON PEDROZA ("PEDROZA") (collectively "PLAINTIFFS"), suing on behalf of themselves and others similarly situated, bring this action against CHALLENGER SHEET METAL, INC., ("CHALLENGER"), THE AUGUSTINE COMPANY ("AUGUSTINE"), ECHO PACIFIC CONSTRUCTION, INC. ("ECHO PACIFIC"), JAYNES CORPORATION OF CALIFORNIA ("JAYNES"), and other as of yet unnamed defendants, alleging unfair business practices and

1 violations of the California Labor Code. PLAINTIFFS bring this action as a class action on  
2 behalf of themselves and others similarly situated.

3 PLAINTIFFS seek restitution, declaratory and injunctive relief, including an equitable  
4 accounting, attorneys' fees, and costs of suit.

5  
6 **THE PARTIES**

7 1. PLAINTIFF DURAN is an adult who has been employed in California by  
8 CHALLENGER from October 2009 until August 2010 as a sheet metal journeyman.

9 2. PLAINTIFF PEDROZA is an adult who has been employed in California by  
10 CHALLENGER from September 2008 until March 2010 as a sheet metal journeyman.

11 3. CHALLENGER is a corporation doing business in California, and is a "person"  
12 as defined by California Labor Code § 18, and by California Business and Professions Code  
13 § 17201. CHALLENGER is an "employer" as defined by both the California Labor Code and  
14 the California Industrial Welfare Commission's orders regulating wages, hours, and working  
15 conditions.

16 4. CHALLENGER is a sheet metal contractor and has at all relevant times possessed  
17 a Class C-43 (Sheet Metal) license from the California Contractors State License Board  
18 ("CSLB"). CHALLENGER employs sheet metal workers to perform construction craft work on  
19 public works and private construction jobs.

20 5. PLAINTIFFS are informed and believe, and thereon allege, that CHALLENGER  
21 currently employs approximately 100 sheet metal workers, that CHALLENGER has employed  
22 as many as 200 sheet metal workers at any given time within the applicable statutory period, and  
23 that CHALLENGER has employed in excess of 400 sheet metal workers in total during the  
24 applicable statutory period.

25 6. AUGUSTINE is a corporation doing business in California, and is a "person" as  
26 defined by California Labor Code § 18, and by California Business and Professions Code  
27 § 17201. AUGUSTINE is a general contractor that has entered into construction contracts, as  
28 defined by Labor Code § 2810, with CHALLENGER, including public works contracts.

1           7.       ECHO PACIFIC is a corporation doing business in California, and is a "person"  
2 as defined by California Labor Code § 18, and by California Business and Professions Code  
3 § 17201. ECHO PACIFIC is a general contractor that has entered into construction contracts, as  
4 defined by Labor Code § 2810, with CHALLENGER, including public works contracts.

5           8.       JAYNES is a corporation doing business in California, and is a "person" as  
6 defined by California Labor Code § 18, and by California Business and Professions Code  
7 § 17201. JAYNES is a general contractor that has entered into construction contracts, as defined  
8 by Labor Code § 2810, with CHALLENGER, including public works contracts.

9           9.       PLAINTIFFS are ignorant of the true names and capacities of Defendants sued  
10 herein as Does 1 through 750 ("DOE DEFENDANTS"), inclusive, but they are the General  
11 Contractors and entities who have entered into construction contracts, as defined by Labor Code  
12 § 2810, with CHALLENGER and therefore PLAINTIFFS sue these DOE DEFENDANTS by  
13 such fictitious names. PLAINTIFFS will amend this Complaint to allege their true names and  
14 capacities when ascertained. PLAINTIFFS are informed and believe and thereupon allege that  
15 each of the fictitiously named DOE DEFENDANT is responsible in some manner for the  
16 occurrences herein alleged and that PLAINTIFFS' damages as herein alleged are proximately  
17 caused by such occurrences.

18           10.      PLAINTIFFS are informed and believe, and thereon allege, that AUGUSTINE,  
19 ECHO PACIFIC, JAYNES, and the DOE DEFENDANTS (collectively "GENERAL  
20 CONTRACTOR DEFENDANTS") is responsible in some manner for the occurrences alleged  
21 herein and that the damages suffered by PLAINTIFFS and the class as herein alleged are  
22 proximately caused by such occurrences.

23           11.      At all relevant times herein, Defendants were the agents of each other and acting  
24 within the course and scope of their agency.

25           12.      Venue is proper based on the location of work performed by Defendants in San  
26 Diego County. The principal offices of each Defendant is also located in San Diego County. The  
27 relief requested is within the jurisdiction of this Court.

28       ///

**FACTUAL ALLEGATIONS**

13. At all times relevant herein, CHALLENGER performed sheet metal work on various construction projects, including public works projects, throughout the State of California. As part of this business, CHALLENGER employed sheet metal journeymen, sheet metal apprentices, and sheet metal technicians (collectively "sheet metal workers").

14. PLAINTIFFS and other members of the proposed class allege that they have suffered injury in fact and economic harm, as described in more detail below, from CHALLENGER's violations of the Unfair Competition Law, Business & Professions Code § 17200 *et seq.*, and the Labor Code, and thus seek restitution and injunctive relief for such injury.

15. Public works construction is regulated by the Department of Industrial Relations ("DIR"), whose Department of Labor Standards Research ("DLSR") determines, pursuant to Labor Code § 1770, 1773, and 1773.1, the prevailing per diem wage, the appropriate job classification through "Scope of Work" and determines the rate of pay, including benefits, that shall be paid to certain crafts of employees, including sheet metal workers.

16. CHALLENGER has provided services on public works construction projects as defined by Labor Code § 1720, including but not limited to: El Capitan High School, Helix High School; Lincoln Middle School; Murrieta Mesa High School; Upland Fire Station # 4; Riverside Fire Station #14; Palm Desert Middle School; Todd Elementary; Logan Heights Library, UCSD RIMAC Annex; Imperial Valley College Science Building; Dual Vista Magnet School; Serrano Intermediate School; San Diego Community College Building P; Temecula Civic Center; Nuview Elementary Library Addition; Tideland Comfort Stations; UC Irvine Arts Building; CSU San Marcos Behavioral & Sciences Building; Hemet High School Weight Room; Rancho Cucamonga Middle School; Diamond & Kennedy Elementary School; Sunset Hills Elementary School; Mt. Miguel High School; El Toro High School; Chet Harritt Elementary School; Prospect Elementary School; Canyon View Elementary School; Deer Canyon Elementary School; UCSD Price Center; El Corazon Senior Center; Hicks Canyon Elementary School; Murrieta City Hall; San Juan Hills High School; Rancho Viejo Middle School; Tahquitz High



1 School; Louis Vandermolen Elementary School; Kaiser High School; and Escondido High  
2 School.

3 17. The DIR's Division of Apprenticeship Standards ("DAS") promulgates  
4 regulations concerning apprenticeship and approves programs for training of apprentices. The  
5 DAS also promulgates regulations pertaining to public works jobs, and the obligation of  
6 contractors doing work on those jobs to request and train apprentices.

7 18. PLAINTIFFS are and have been, at all relevant times herein, employed by  
8 CHALLENGER as a nonexempt employee who was paid hourly wages, in on-site construction  
9 occupations, as defined by Industrial Welfare Commission Wage Order 16-2001, 8 CCR  
10 §11160(2)(C) (hereinafter "Wage Order 16").

11 19. CHALLENGER failed to pay the correct minimum prevailing wage to  
12 PLAINTIFFS and the class on public works jobs, in violation of Labor Code § 1774.

13 20. CHALLENGER failed to pay the correct minimum prevailing wage to  
14 PLAINTIFFS and the class on public works jobs, including by failing to pay employees the  
15 correct Zone Pay under the applicable prevailing wage determination.

16 21. CHALLENGER failed to pay the correct minimum prevailing wage to  
17 PLAINTIFFS and the class on public works jobs, including by failing to properly pay employer  
18 benefit contributions in the correct amount or failing to pay employer benefit contributions at all,  
19 in violation of Labor Code § 1773.1.

20 22. CHALLENGER failed to pay the correct minimum prevailing wage to  
21 PLAINTIFFS and the class, including by regularly requiring them to travel to locations,  
22 including but not limited to the shop or other worksites, in connection with these prevailing  
23 wage jobs, to pick up or drop off materials or for other purposes, yet did not pay the workers the  
24 correct minimum prevailing wage for these hours worked.

25 23. Each GENERAL CONTRACTOR DEFENDANT knew of CHALLENGER's  
26 failure to pay the correct minimum prevailing wage to PLAINTIFFS and the class on public  
27 works jobs and failed to diligently take corrective action to halt or rectify the failure upon  
28 becoming aware of it.

1           24. CHALLENGER failed to pay the same benefits to PLAINTIFFS and the class on  
2 both public works and private jobs, and therefore CHALLENGER failed to "annualize" the  
3 employer benefit contributions as required under Labor Code § 1773.1(d) and cannot receive the  
4 prevailing wage credit for public works projects on which it provides services.

5           25. CHALLENGER violated Labor Code § 1777.5 by failing to pay to apprentices the  
6 proper prevailing wage rate on public works projects, failing to submit public works contract  
7 award information to and properly request apprentices from an approved apprenticeship program,  
8 failing to hire the appropriate ratio of apprentices to journeymen on public works projects, and  
9 failing to properly make apprenticeship training fund contributions on public works projects.

10           26. CHALLENGER violated Labor Code §§ 1174 and 1776 by maintaining inaccurate  
11 certified payroll records ("CPRs") for PLAINTIFFS and the class on public works jobs in that,  
12 *inter alia*, these records did not accurately show all hours worked on the public works jobs.

13           27. California Labor Code § 510 provides, *inter alia*, that eight hours of labor  
14 constitutes a day's work, and that any work in excess of eight (8) hours in one workday and any  
15 work in excess of 40 hours in one workweek must be compensated at an overtime rate of one  
16 and one-half times the regular rate of pay of the employee. Labor Code § 510 further provides  
17 that any work in excess of 12 hours in one workday must be compensated at an overtime are of  
18 twice the regular rate of pay of the employee. Wage Order 16 sets forth the same requirement  
19 with respect to mandated overtime pay for employees working in on-site construction  
20 occupations. Labor Code §§ 1810, 1811 and 1815 provides the same requirements for public  
21 works projects, and Wage Order 16 sets forth the same requirements with respect to mandated  
22 overtime and double time pay for employees working in on-site construction occupations.

23           28. During their employment with CHALLENGER, PLAINTIFFS and the class  
24 worked more than eight hours in a day and more than 40 hours in a week, but were not paid the  
25 corresponding overtime rates of pay.

26           29. During the time that PLAINTIFFS and the class worked for CHALLENGER,  
27 CHALLENGER made unlawful deductions from paychecks, in violation of Labor Code §§ 221  
28 and 223, in that the deductions were not required or permitted by state or federal law, they were

1 not expressly authorized in writing by the employees, and they were not deductions to cover  
2 health and welfare or pension plan contributions expressly authorized by a collective bargaining  
3 or wage agreement, as provided in Labor Code § 224.

4 30. Labor Code § 226 provides that every employer is required, "semimonthly or at  
5 the time of each payment of wages," to provide each of his or her employees an itemized wage  
6 statement, including *inter alia*, the total hours worked by the employee (except for salaried  
7 employees), and "all applicable hourly rates in effect during the pay period and the  
8 corresponding number of hours worked at each hourly rate by the employee."

9 31. During the respective periods that PLAINTIFFS and the class were employed by  
10 CHALLENGER, CHALLENGER failed to provide full and accurate itemized wage statements  
11 as required by Labor Code § 226. The wage statements provided by CHALLENGER to  
12 PLAINTIFFS and to other members of the proposed class were incomplete and defective in that  
13 they did not include and state the correct hourly rates (including the proper overtime hourly  
14 rates) at which employees were paid and the correct "corresponding number of hours worked at  
15 each hourly rate by the employee" as required by Labor Code § 226.

16 32. CHALLENGER also violated Labor Code §226 by paying PLAINTIFFS and the  
17 class in cash and not providing these employees with an itemized wage statement for these cash  
18 payments explaining what, if any, deductions were taken from those wages paid in cash.

19 33. CHALLENGER failed to pay PLAINTIFFS and other class members, all wages  
20 due and owing at termination or quit, in violation of Labor Code §§ 201 and 202.

21 34. During the respective periods of employment with CHALLENGER,  
22 PLAINTIFFS and class members were "aggrieved employees" of CHALLENGER. GENERAL  
23 CONTRACTOR DEFENDANTS violated Labor Code § 2810(a) because they entered into  
24 construction contracts with CHALLENGER where they knew or should have known that the  
25 contracts did not contain sufficient funds to meet labor standards. The GENERAL  
26 CONTRACTOR DEFENDANTS failed to meet their rebuttable presumption that they did not  
27 do so because they failed to complete the contract requirements of Labor Code §2810(d),  
28 specifically items 3-9. Based on the GENERAL CONTRACTOR DEFENDANTS' familiarity

1 with the construction industry, knowledge of the absence of these items from the contracts  
 2 means they should have known the contracts did not contain sufficient funds, as the absence of  
 3 this information would make a reasonably prudent person inquire whether the contract contains  
 4 sufficient funds to comply with the applicable laws. Therefore, the failure to include these items  
 5 resulted in economic harm to the aggrieved employees of CHALLENGER.

6 35. Defendants' conduct, alleged in paragraphs 9 to 34, resulted in loss of wages  
 7 constituting economic harm and injury in fact to PLAINTIFFS and the class.

### 8 9 CLASS ACTION ALLEGATIONS

10  
11 36. PLAINTIFFS bring this action on behalf of themselves and all others similarly  
 12 situated as a class action under Code of Civil Procedure § 382. PLAINTIFFS seek to represent  
 13 the class of all sheet metal workers who performed work for CHALLENGER between November  
 14 22, 2006 and the present. PLAINTIFFS also seek to represent the following sub-classes as  
 15 follows:

- 16 (a) all sheet metal workers who performed work for CHALLENGER on public  
 17 works jobs between November 22, 2006 and the present who were not paid  
 18 at the correct prevailing wage ("PREVAILING WAGE SUB-CLASS")
- 19 (b) all sheet metal workers who performed work for CHALLENGER between  
 20 November 22, 2006 and the present who were not paid an overtime  
 21 premium for work over 8 hours in a day and 40 hours in a week  
 22 ("OVERTIME SUB-CLASS");
- 23 (c) all sheet metal workers who performed work for CHALLENGER between  
 24 November 22, 2006 and the present who were not provided with accurate  
 25 wage statements ("WAGE STATEMENT SUB-CLASS");
- 26 (d) all sheet metal workers who performed work for CHALLENGER between  
 27 November 22, 2006 and the present from whose pay CHALLENGER made  
 28 unauthorized deductions, in violation of Labor Code §§ 221, 223, and Wage  
 Order 16 ("UNAUTHORIZED DEDUCTION SUB-CLASS");
- (e) all sheet metal workers who performed work for CHALLENGER between  
 November 22, 2006 and the present who were not paid all wages due and

1                   owing at termination or quit, in violation of Labor Code §§ 201 and 201  
2                   ("WAITING TIME SUB-CLASS"); and

- 3                   (f)     all sheet metal workers who performed work for CHALLENGER between  
4                   November 22, 2006 and the present who worked under construction  
5                   contracts that did not contain sufficient funds to meet labor standards, in  
6                   violation of Labor Code § 2810 ("2810 SUB-CLASS").

7                   37.     PLAINTIFFS reserve the right under Rule 3.765(b), California Rules of Court, to  
8                   amend or modify the class and subclass descriptions with greater specificity or further division  
9                   into subclasses or limitation to particular issues.

10                  38.     This action may properly be maintained as a class action under Code of Civil  
11                  Procedure § 382 because there is a well-defined community of interest in the litigation and the  
12                  proposed class are easily ascertainable.

13                  **Numerosity**

14                  39.     The members of the proposed class are so numerous that joinder of all the  
15                  members of the class is impracticable. While the precise number of class members has not been  
16                  determined at this time, PLAINTIFFS are informed and believe that CHALLENGER currently  
17                  employ approximately 100 sheet metal workers and has employed as many as 400 workers in the  
18                  relevant time period.

19                  40.     PLAINTIFFS allege CHALLENGER's records would provide information as to  
20                  the number of all class members.

21                  **Commonality**

22                  41.     PLAINTIFFS raise common questions of law and fact that predominate over any  
23                  questions affecting only individual class members. These common questions of law and fact  
24                  include, without limitation:

- 25                         (a)     Whether CHALLENGER paid class members at the correct prevailing  
26                         wage;  
27                         (b)     Whether CHALLENGER paid class members for hours worked over 8 in a  
28                         day and 40 in a week at an overtime rate of pay;

///



- 1 (c) Whether CHALLENGER violated Labor Code §§ 221, 223, and Wage  
 2 Order 16 by making unauthorized deductions from employees' paychecks;  
 3 (d) Whether CHALLENGER violated Labor Code § 226 by failing to provide  
 4 correct information on wage statements, such as hours worked, rates of  
 5 pay, and lawful deductions made;  
 6 (e) Whether CHALLENGER will fully failed to pay all wages due and owing  
 7 at quit or discharge, as required by Labor Code §§ 201 and 202;  
 8 (f) Whether PLAINTIFFS and the class worked under construction contracts  
 9 that did not contain sufficient funds to meet labor standards, in violation of  
 10 Labor Code § 2810; and  
 11 (g) Whether PLAINTIFFS and the class are entitled to equitable relief  
 12 pursuant to Business and Professions Code §17200 *et seq.*

### 13 Typicality

14 42. The claims of the PLAINTIFFS are typical of the claims of the proposed class.  
 15 PLAINTIFFS and all members of the proposed class sustained injuries and damages arising out  
 16 of and caused by CHALLENGER's common course of conduct in violation of laws and  
 17 regulations alleged herein.

### 18 Superiority of Class Action

19 43. A class action is superior to other available means for the fair and efficient  
 20 adjudication of this controversy. Individual joinder of all proposed class members is not  
 21 practicable, and questions of law and fact common to the class predominate over any questions  
 22 affecting only individual members of the class. Each member of the class has been damaged and  
 23 is entitled to recovery by reason of CHALLENGER's illegal policies and/or practices.

24 44. Class action treatment will allow those similarly-situated persons to litigate their  
 25 claims in the manner that is most effective and economical for the parties and the judicial system.  
 26 PLAINTIFFS are unaware of any difficulties that are likely to be encountered in the management  
 27 of this action that would preclude its maintenance as a class action.

28 ///

45. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all proposed class members is impractical. Even if every proposed class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, gives rise to fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each proposed class member. PLAINTIFFS do not anticipate difficulties in the management of this action.

**FIRST CAUSE OF ACTION**

**(California Business and Professions Code §17200)**

**(AGAINST ALL DEFENDANTS)**

46. PLAINTIFFS reallege and incorporate herein by reference the allegations of paragraphs 1 through 45 above as though set forth fully herein.

47. The California Unfair Competition Law (hereinafter referred to as the "UCL"), Business and Professions Code § 17200, *et seq.*, defines unfair competition to include any unlawful, unfair, or fraudulent business act or practice. The UCL "borrows violations" from other statutes and authorizes any person who has suffered injury in fact and who has lost money or property as a result of such unfair competition to bring an action for relief under the statute. The UCL also provides that a court may enjoin acts of unfair competition, issue declaratory and other equitable relief, and order restitution of money or property acquired by means of unfair competition.

48. Beginning on an exact date unknown to PLAINTIFFS, but at least since November 22, 2006, CHALLENGER has committed acts of unfair competition proscribed by Business and Processions Code § 17200, *et seq.*, including the acts and practices alleged herein.

1 CHALLENGER has engaged in unlawful and unfair business practices including, but not  
2 limited to, violations of:

- 3 (a) Labor Code §§ 201, 202 (payment of wages at termination or quit);
- 4 (b) Labor Code § 204 (payment of wages);
- 5 (c) Labor Code §§ 221, 223 and Wage Order 16 (unauthorized deductions);
- 6 (d) Labor Code § 226(a) (itemized wage statements);
- 7 (e) Labor Code §§ 510, 1810, and Wage Order 16 (overtime);
- 8 (f) Labor Code § 1774 (payment of prevailing wages);
- 9 (g) Labor Code §§ 1174, 1174.5, 1776 (failure to maintain accurate records);
- 10 (h) Labor Code § 1194 (minimum and overtime wages); and
- 11 (i) Labor Code § 2810 (contracts with insufficient funds).

12 49. The violation of these laws serve as unlawful predicate acts result in economic  
13 harm and injury in fact to PLAINTIFFS and class members for purposes of Business and  
14 Professions Code § 17200, and remedies are provided therein under Business and Professions  
15 Code §17203.

16 50. Beginning on an exact date unknown to PLAINTIFFS, but at least since  
17 November 22, 2006, GENERAL CONTRACTOR DEFENDANTS have committed acts of  
18 unfair competition proscribed by Business and Professions Code § 17200, *et seq.*, including the  
19 acts and practices alleged herein. GENERAL CONTRACTOR DEFENDANTS have engaged  
20 in unlawful and unfair business practices including, but not limited to, violations of Labor Code  
21 § 2810 (contracts with insufficient funds).

22 51. The violation of these laws serve as unlawful predicate acts and result in economic  
23 harm and injury in fact to PLAINTIFFS and the class for purposes of Business and Professions  
24 Code § 17200, and remedies are provided therein under Business and Professions Code § 17203.

25 52. The acts and practices described in this Complaint constitute unlawful, unfair and  
26 fraudulent business practices, and unfair competition, within the meaning of Business and  
27 Professions Code § 17200 *et seq.*

28 ///

54. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition and order disgorgement of all profits gained by Defendant by operation of the practices alleged therein. PLAINTIFFS and the class are entitled to restitution pursuant to Business and Professions Code §§ 17203 and 17208 for all wages unlawfully withheld from them during the four years prior to the filing of this Complaint. PLAINTIFFS will, upon leave of the Court, amend this Complaint to state such amounts when they become ascertained.

55. PLAINTIFFS' success in this action will enforce important rights affecting the public interest, and in that regard, PLAINTIFFS sue on behalf of themselves and others similarly situated. PLAINTIFFS seek and are entitled to unpaid wages, unpaid overtime, and injunctive relief, and any other remedy owing to PLAINTIFFS and the class.

56. The violations alleged above, are on-going, and will continue until and unless this Court enters an injunction barring such violations.

57. In order to prevent Defendants from profiting and benefiting from their wrongful and illegal acts, an order requiring Defendants to disgorge all of the profits and gains that they have reaped through their contracts is appropriate and necessary.

58. PLAINTIFFS are entitled to an award of attorneys' fees, costs and expenses incurred in this action pursuant Code of Civil Procedure §1021.5 and Labor Code §1194.

**WHEREFORE, PLAINTIFFS** pray for relief as set forth below.

**SECOND CAUSE OF ACTION**  
**(California Labor Code §§ 204, 1774 - Payment of Prevailing Wages)**  
**(AGAINST CHALLENGER)**

**SECOND CAUSE OF ACTION**  
**(California Labor Code §§ 204, 1774 - Payment of Prevailing Wages)**  
**(AGAINST CHALLENGER)**

59. PLAINTIFFS reallege and incorporate paragraphs 1 through 58, inclusive, as though fully set forth herein.

III

1           60. Labor Code § 204 provides: "All wages, other than those mentioned in Section  
2 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice  
3 during each calendar month, on days designated in advance by the employer as regular paydays."

4           61. Labor Code § 1774 provides: "The contractor to whom the contract is awarded,  
5 and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to  
6 all workmen employed in the execution of the contract."

7           62. CHALLENGER have unfairly and unlawfully failed to pay PLAINTIFFS and the  
8 class all prevailing wages earned in their employment on regular paydays, as established by Labor  
9 Code §§ 204 and 1774. CHALLENGER's failure to pay includes, but is not limited to: failing to  
10 pay for all hours worked, failing to properly pay employee benefit contributions, and failing to  
11 pay overtime.

12           63. Labor Code § 1194 provides for a private right of action to recover unpaid wages,  
13 including minimum wages such as the prevailing wage, and also provides for the recovery of  
14 attorney's fees and costs. It states, in pertinent part:

15                   [A]ny employee receiving less than the legal minimum wage or the legal  
16 overtime compensation applicable to the employee is entitled to recover in  
17 a civil action the unpaid balance of the full amount of this minimum wage  
or overtime compensation, including interest thereon, reasonable attorney's  
fees, and costs of suit.

18           64. Labor Code § 218 provides for a private right of action to recover wages and  
19 penalties under the Labor Code: "Nothing in this article shall limit the right of any wage claimant  
20 to sue directly or through an assignee for any wages or penalty due him under this article."

21           65. PLAINTIFFS seek to recover unpaid wages and penalties directly under Labor  
22 Code §§ 1194 and 218.

23           66. PLAINTIFFS are entitled to an award of attorneys' fees, costs and expenses  
24 incurred in this action pursuant Code of Civil Procedure § 1021.5 and Labor Code § 1194.

25           WHEREFORE, PLAINTIFFS pray for relief as set forth herein below.

26       ///

27       ///

28       ///



**THIRD CAUSE OF ACTION**

**(California Labor Code §§ 510, 1810, 1811, 1815 and Wage Order 16 - Overtime Pay)**

**(AGAINST CHALLENGER)**

67. PLAINTIFFS reallege and incorporate paragraphs 1 through 66, inclusive, as though fully set forth herein.

68. Wage Order 16, provides, in pertinent part:

[E]mployees eighteen (18) years of age or over . . . shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over forty (40) hours in the workweek.

69. Labor Code § 510 provides, in pertinent part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of not less than twice the regular rate of pay of an employee.

70. Labor Code § 1810 provides:

Eight hours of labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

71. Labor Code § 1811 provides:

The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

72. Labor Code § 1815 provides:

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

73. During their employment with CHALLENGER, PLAINTIFFS and the class worked more than eight hours in a day and more than 40 hours in a week, but were not paid the corresponding overtime rates of pay.

74. Labor Code §1194 provides for a private right of action to recover overtime compensation and also provides for the recovery of attorney's fees and costs. It states, in pertinent part:

[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

75. PLAINTIFFS seek to recover all unpaid overtime wages and interest due to themselves and the class.

76. PLAINTIFFS are entitled to an award of attorneys' fees, costs and expenses incurred in this action pursuant Code of Civil Procedure §1021.5 and Labor Code §1194.

WHEREFORE, PLAINTIFFS pray for relief as set forth herein below.

#### **FOURTH CAUSE OF ACTION**

**(California Labor Code §§ 221, 223, and Wage Order 16 – Unauthorized Deductions)  
(AGAINST CHALLENGER)**

77. PLAINTIFFS reallege and incorporate all the allegations in paragraphs 1 through 76, inclusive, as though fully set forth herein.

78. Defendant has unfairly and unlawfully violated Labor Code §§ 221, 223, and Wage Order 16 by making unauthorized deductions from employees' paychecks.

79. Labor Code § 221 provides: "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

80. Labor Code § 223 provides: "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract."

81. Labor Code § 224 provides, in pertinent part:

"The provisions of Section 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an

employee's wages when the employer is required or empowered to do so by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreements or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement."

82. Wage Order 16 provides, in pertinent part:

Deductions from Pay.

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law.

83. CHALLENGER has made deductions from the paychecks of PLAINTIFFS and the class that were neither required nor permitted by federal or state law, that were not expressly authorized in writing by the employees, and that were not to cover benefit contributions expressly authorized by a collective bargaining agreement.

84. PLAINTIFFS seek to recover, for themselves and the class, all wages unlawfully deducted from employees' paychecks.

85. PLAINTIFFS are entitled to an award of attorneys' fees, costs and expenses incurred in this action pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194.

Wherefore, PLAINTIFFS pray for relief as set forth herein below.

**FIFTH CAUSE OF ACTION**

**(California Labor Code § 226 - Itemized Wage Statements)**

**(AGAINST CHALLENGER)**

86. PLAINTIFFS reallege and incorporate all the allegations in paragraphs 1 through 85 inclusive, as though fully set forth herein.

87. Labor Code § 226 provides, in pertinent part:

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee, whose

1 compensation is solely based on a salary and who is exempt from payment  
 2 of overtime under subdivision (a) of Section 515 or any applicable order of  
 3 the Industrial Welfare Commission, (3) the number of piece-rate units  
 4 earned and any applicable piece rate if the employee is paid on a piece-rate  
 basis...(9) all applicable hourly rates in effect during the pay period and the  
 corresponding number of hours worked at each hourly rate by the  
 employee.

5 (b) An employer that is required by this code or any regulation  
 6 adopted pursuant to this code to keep the information required by  
 subdivision (a) shall afford current and former employees the right to  
 7 inspect or copy the records pertaining to that current or former employee,  
 upon reasonable request to the employer....

8 (c) An employer who receives a written or oral request to inspect or  
 9 copy records pursuant to subdivision (b) pertaining to a current or former  
 employee shall comply with the request as soon as practicable, but no later  
 than 21 calendar days from the date of the request....

10 (e) An employee suffering injury as a result of a knowing and  
 11 intentional failure by an employer to comply with subdivision (a) is  
 12 entitled to recover the greater of all actual damages or fifty dollars (\$50)  
 for the initial pay period in which a violation occurs and one hundred  
 13 dollars (\$100) per employee for each violation in a subsequent pay period,  
 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
 is entitled to an award of costs and reasonable attorney's fees.

14 (f) A failure by an employer to permit a current or former  
 15 employee to inspect or copy records within the time set forth in  
 16 subdivision (c) entitles the current or former employee or the Labor  
 Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from  
 the employer.

17  
 18 88. Under Labor Code § 226(g), "An employee may also bring an action for injunctive  
 19 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable  
 20 attorney's fees."

21 89. As a direct and proximate result of CHALLENGER's failure to pay PLAINTIFFS  
 22 and other members of the proposed class the wages mandated by law, none of the statements  
 23 provided by CHALLENGER to PLAINTIFFS and other members of the proposed class have  
 24 accurately reflected actual gross wages earned, or net wages earned. Additionally, those  
 25 statements have failed to accurately reflect the deductions lawfully withheld by CHALLENGER.  
 26 PLAINTIFFS seek penalties on the failure to provide accurate itemized statements and injunctive  
 27 relief in the form of correct wage statements in the future.

28 ///





1 an employee who is discharged or who quits, the wages of the employee  
2 shall continue as a penalty from the due date thereof at the same rate until  
3 paid or until an action therefor is commenced; but the wages shall not  
4 continue for more than 30 days."

5 97. As detailed above, CHALLENGER failed to pay PLAINTIFFS their wages in a  
6 timely manner upon discharge or quit, as required by Labor Code §§ 201 and 202. More than 30  
7 days have passed since CHALLENGER was required to pay PLAINTIFFS these wages.

8 98. Pursuant to Labor Code § 203, CHALLENGER owes PLAINTIFFS and the class  
9 waiting time penalties in the amount of thirty days of wages.

10 99. PLAINTIFFS are entitled to an award of attorneys' fees, costs and expenses  
11 incurred in this action pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194.

12 WHEREFORE, PLAINTIFFS pray for judgment as set forth herein below.

13 **SEVENTH CAUSE OF ACTION**

14 **(Labor Code § 2810 – Contracts with Insufficient Funds)**

15 **(AGAINST GENERAL CONTRACTOR DEFENDANTS)**

16 100. PLAINTIFFS reallege and incorporate all the allegations in paragraphs 1 through  
17 99, inclusive, as though fully set forth herein.

18 101. PLAINTIFFS and other members of the proposed class are "aggrieved employees"  
19 under Labor Code § 2810 which provides: "(a) A person or entity may not enter into a contract or  
20 agreement for labor or services with a construction, farm labor, garment, janitorial, or security  
21 guard contractor, where the person or entity knows or should know that the contract or  
22 agreement does not include funds sufficient to allow the contractor to comply with all applicable  
23 local, state, and federal laws or regulations governing the labor or services to be provided."

24 102. General Contractor Defendants entered into contracts for construction labor  
25 services where they knew or should have known the contract or agreement did not include funds  
26 sufficient to allow the contractor to comply with all applicable local, state, and federal laws or  
27 regulations governing the labor or services to be provided.

28 ///

103. There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor meets all of the requirements in subdivision (d). See Labor Code § 2810(b).

104. To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, or security guard contractor for labor or services must be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

- (1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, or security guard contractor through whom the labor or services are to be provided.
- (2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.
- (3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, or security guard contractor.
- (4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, or security guard contractor.
- (5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.
- (6) The address of any real property to be used to house workers in connection with the contract or agreement.
- (7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.
- (8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, or security guard contractor for services under the contract or agreement.

1 (9) The total number of persons who will be utilized under the contract  
2 or agreement as independent contractors, along with a list of the  
3 current local, state, and federal contractor license identification  
4 numbers that the independent contractors are required to have  
5 under local, state, or federal laws or regulations.

6 (10) The signatures of all parties, and the date the contract or agreement  
7 was signed.

8 105. General Contractor Defendants and CHALLENGER have not included  
9 information related to numbers 3-9 in Labor Code § 2810, since at least November 22, 2006.

10 106. Given General Contractors' knowledge of the construction industry, the failure  
11 of CHALLENGER to provide the information described in Paragraph 103, above, should have  
12 caused the General Contractor Defendants to inquire further whether their contracts with  
13 CHALLENGER contained sufficient funds to comply with applicable laws.

14 107. Under Labor Code § 2810(g)(1):

15 An employee aggrieved by a violation of subdivision (a) may file  
16 an action for damages to recover the greater of all of his or her actual  
17 damages or two hundred fifty dollars (\$250) per employee per violation  
18 for an initial violation and one thousand dollars (\$1,000) per employee  
19 for each subsequent violation, and, upon prevailing in an action brought  
20 pursuant to this section, may recover costs and reasonable attorney's fees.  
21 An action under this section may not be maintained unless it is pleaded  
22 and proved that an employee was injured as a result of a violation of a  
23 labor law or regulation in connection with the performance of the  
24 contract or agreement.

25 108. PLAINTIFFS seek all damages or penalties entitled to them and to other  
26 proposed class members under this section for the labor violations alleged in causes of action 1-6  
27 above.

28 109. Under Labor Code § 2810(g)(2) "An employee aggrieved by a violation of  
subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover  
costs and reasonable attorney's fees."

The violations of Labor Code § 2810 are on-going, and will continue until and  
unless this Court enters an injunction barring such violations. PLAINTIFFS seek such an  
injunction.

111. PLAINTIFFS are entitled to an award of attorneys' fees, costs and expenses incurred in this action pursuant Code of Civil Procedure §1021.5, Labor Code §1194, and Labor Code § 2810(g).

WHEREFORE, PLAINTIFFS pray for relief as set forth below.

**PRAYER FOR RELIEF**

PLAINTIFFS pray for relief as follows:


1. For an order certifying this action as a class action;
2. For an award of all prevailing wages due to PLAINTIFFS and the class for the class period as defined by the Court at the time of certification;
3. For an award of all unpaid overtime compensation due to PLAINTIFFS and the class for the class period as defined by the Court at the time of certification;
4. For an award of all monies deducted without authorization from the pay of PLAINTIFFS and the class for the class period as defined by the Court at the time of certification;
5. For an award of damages, penalties and injunctive relief pursuant to Labor Code § 226;
6. For an award of penalties pursuant to Labor Code § 203;
7. For an award of damages and injunctive relief pursuant to Labor Code § 2810;
8. For pre-judgment interest to the extent permitted by law;
9. For an award of damages, penalties and pre-judgment interest as set forth in this Prayer for Relief, lines 2 through 8, in excess of \$5,000,000.00 (five million dollars).
10. For an award of attorneys' fees and costs incurred in the filing and prosecution of this action;
11. For an order requiring Defendants to pay restitution to PLAINTIFFS and the class due to Defendants' unlawful activities, pursuant to Business and Professions Code §§ 17200 through 17205;
12. For an order declaring CHALLENGER's complained-of prevailing wage, overtime, and wage deduction practices to be unlawful and requiring CHALLENGER to cease

1 and desist from unlawful activities in violation of California Business and Professions Code  
2 § 17200; and

3 13. For such other and further relief as the Court may deem proper.  
4  
5

6 Dated: November 22, 2010

HAYES & CUNNINGHAM, LLP  
RICARDO OCHOA

8   
9 By: \_\_\_\_\_  
10 RICARDO OCHOA  
11 Attorneys for PLAINTIFFS  
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# **EXHIBIT “B”**

**EXHIBIT “B”**



SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO): CHALLENGER SHEET METAL, INC.,  
THE AUGUSTINE COMPANY, ECHO PACIFIC CONSTRUCTION,  
INC., JAYNES CORPORATION OF CALIFORNIA, and DOES 1-175

## YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRANDON DURAN and BYRON PEDROZA, individually and on  
behalf of all others similarly situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2010 NOV 22 P 2:53

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California,  
County of San Diego, Hall of Justice  
330 W. Broadway, San Diego, CA 92101

CASE NUMBER:  
(Número del Caso):

37-2010-00104552-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Dermis Hayes, Ricardo Ochoa, Hayes & Cunningham, LLP, 3258 4th Ave., San Diego, CA 92103-619-297-6900

DATE: NOV 22 2010  
(Fecha)

Clerk, by C. Beutler Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

FILED

# **EXHIBIT “C”**

**EXHIBIT “C”**

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dennis J. Hayes, Esq. (SBN 123576) Ricardo Ochoa, Esq. (SBN 206462) Hayes & Cunningham, LLP 3258 Fourth Ave., San Diego, CA 92103 TELEPHONE NO.: 619-297-6900 FAX NO.: 619-297-6901		FOR COURT USE ONLY 2010 NOV 22 P 2:53 SAN DIEGO COUNTY, CA
ATTORNEY FOR (Name): <b>PLAINTIFFS</b>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN DIEGO</b> STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
CASE NAME: <b>BRANDON DURAN, et al. v. CHALLENGER SHEET METAL, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		CASE NUMBER: <b>37-2010-00104552-CU-OE-CTL</b>
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) <b>Non-PIPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIPD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): 7
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11/22/10

Ricardo Ochoa

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)</b>
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i>	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos Property Damage	Collection Case—Seller Plaintiff	<b>Enforcement of Judgment</b>
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Product Liability (not asbestos or toxic/environmental) (24)	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Auto Subrogation	Confession of Judgment (non-domestic relations)
Medical Malpractice—Physicians & Surgeons	Other Coverage	Sister State Judgment
Other Professional Health Care Malpractice	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Other PI/PD/WD (23)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	<b>Real Property</b>	<b>Miscellaneous Civil Complaint</b>
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Other PI/PD/WD	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
<b>Non-PI/PD/WD (Other) Tort</b>	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Fraud (16)	<b>Unlawful Detainer</b>	<b>Miscellaneous Civil Petition</b>
Intellectual Property (19)	Commercial (31)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Residential (32)	Other Petition (not specified above) (43)
Legal Malpractice	Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i>	Civil Harassment
Other Professional Malpractice (not medical or legal)	<b>Judicial Review</b>	Workplace Violence
Other Non-PI/PD/WD Tort (35)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
<b>Employment</b>	Petition Re: Arbitration Award (11)	Election Contest
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Name Change
Other Employment (15)	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor	
	Commissioner Appeals	

# **EXHIBIT “D”**

**EXHIBIT “D”**



## OFFICE RECORDS BOOK

1561

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whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(8) Trustee accepts this Trust when, this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed or Trust or of any action or proceeding in which Trustee, Beneficiary or Trustee shall be a party unless brought by Trustee.

C. The Undersigned Trustee Remits that a copy of any notice of default and of any notice of sale hereunder be mailed to him at his mailing address opposite his signature herein. Failure to insert such address shall be deemed a waiver of any request hereunder for a copy of such notices.

Mailing Address for business  
Street and number City State  
1112 E. 7th St., National City, Calif.

Signature of Trustee  
OTTO LABACH  
MARIANA LABACH

A. A. Durnan witness

STATE OF CALIFORNIA }  
COUNTY OF SAN DIEGO } SS.

On this 17th day of September, 1943, before me, the undersigned, a Notary Public in and for said county, personally appeared OTTO LABACH and MARIANA LABACH known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

WITNESS my hand and official seal.

Viola G. Slater

Notary Public in and for said county and state.

Recorded at request of SOUTHERN TITLE & TRUST CO. OCT 2 1943 at 9 A.M.  
J.20  
64012 75  
MARIANA LABACH, County Recorder  
By Deputy S. Lake.

NOV 11/43-13  
7-5-7/M/M/ee  
75-40-80-2

Honorable Earl Warren,  
Governor of California,  
Sacramento, California.

SEP 8 1943

Sir:

The United States of America became vested with a valid title to certain land in San Diego County, California on December 31, 1942 pursuant to a declaration of taking filed on that date in the United States District Court for the Southern District of California in the case of United States of America v. 123,420 acres of land in San Diego and Gracie Counties, California, Santa Lee Flood, et al, Civil No. 197-48. This land which is more fully and particularly described in the attached Exhibit "A" was acquired for the establishment of Camp Joseph H. Pendleton, a Marine Corp Training Area at Oceanside, California.

In accordance with the provisions of the act of Congress approved October 9, 1940 (54 Stat., 1083), jurisdiction over the aforementioned land is hereby accepted by the Navy Department on behalf of the United States of America in the manner and form provided and coded by an Act of the California Legislature approved March 12, 1872, as amended by Chapter 710 of the Statutes of 1939 (Sec. 20 of the Political Code of California, 1939).

There are enclosed ten carbon copies of this letter of acceptance. Their return in the enclosed franked envelope with your endorsement thereon of the time of the receipt of this acceptance will be appreciated. One copy will be forwarded to the Attorney General of the United States and the other retained in the files of the Navy Department.

Very truly yours,

James Forrester, Acting  
Original of this letter received  
Date 9/17/43  
-----Governor.

Encl.  
1. 10 3 carbon copies of 1 17  
CC: Atty Gen CG-11  
Comd'g USMC  
Commanding General, FMTC  
Camp Elliott, San Diego, Calif.

PHOTOGRAPHED BY S. WRIGHT JR. DEPUTY RECORDER

Exhibit "D"  
DFTS000034



OFFICIAL RECORDS BOOK 1561

## EXHIBIT "A"

DESCRIPTION OF 123,436 ACRES, MORE OR LESS, LIEING IN  
ORANGE AND SAN DIEGO COUNTIES, CALIFORNIA. (MANHUA  
COPPE TRACTING AREA, MANHUA SANTA CARGARITA).

## PARCEL "A"

These portions of Rancho Santa Margarita y las Flores, in San Diego County, California, as shown on Record of Survey Map No. 794, filed in the office of the County Recorder of said San Diego County, January 17, 1942, and of Rancho Mission Vieja in Orange County, State of California, as shown on Record of Survey Map filed 2/18/42 in Book 12, Page 5, in the office of the County Recorder of Orange County, bounded and described as follows:

beginning at the intersection of the easterly boundary line of said Rancho Santa Margarita y las Flores, (being also the line between San Diego County and Orange County), and the Mean High Tide line of the Pacific Ocean, as shown on said Record of Survey Map No. 794; thence S. 13° 13' 47.69" E. along said easterly boundary line, a distance of 26,836.34 feet, more or less, to intersection corner, as shown on said Record of Survey Map No. 794; thence leaving said line between Orange and San Diego Counties, and running in a general northeasterly direction along the line delineated on said Record of Survey Map of a portion of Rancho Mission Vieja, the following courses and distances:

N. 87° 01' 11" E.	a distance of 117.35 feet;
N. 44° 33' 01" E.	a distance of 136.71 feet;
N. 37° 12' 11" E.	a distance of 211.48 feet;
N. 38° 12' 11" E.	a distance of 211.48 feet;
N. 60° 43' 14" E.	a distance of 1423.74 feet;
N. 40° 12' 14" E.	a distance of 139.52 feet;
N. 37° 14' 14" E.	a distance of 187.77 feet;
N. 47° 17' 41" E.	a distance of 279.89 feet;
N. 13° 39' 09" E.	a distance of 214.99 feet;
N. 38° 23' 28" E.	a distance of 3411.46 feet;
N. 78° 33' 28" E.	a distance of 7411.23 feet;
N. 40° 26' 12" E.	a distance of 2608.41 feet;
N. 34° 34' 06" E.	a distance of 904.09 feet;
N. 31° 12' 15" E.	a distance of 1243.29 feet;
N. 31° 12' 15" E.	a distance of 346.71 feet;
N. 47° 24' 44" E.	a distance of 100.79 feet;
N. 74° 40' 49" E.	a distance of 113.79 feet;
N. 39° 35' 41" E.	a distance of 270.26 feet;
N. 48° 35' 10" E.	a distance of 268.78 feet;
N. 37° 05' 37" E.	a distance of 453.65 feet;
N. 32° 17' 37" E.	a distance of 208.95 feet;
N. 87° 34' 11" E.	a distance of 179.79 feet;
N. 14° 42' 27" E.	a distance of 75.96 feet;
N. 70° 31' 17" E.	a distance of 640.68 feet;
N. 3° 24' 07" E.	a distance of 437.39 feet;
N. 61° 25' 47" E.	a distance of 308.41 feet;
N. 21° 33' 37" E.	a distance of 304.81 feet;
N. 74° 13' 13" W.	a distance of 194.36 feet;
N. 3° 34' 43" W.	a distance of 348.70 feet;
N. 25° 39' 37" E.	a distance of 270.09 feet;
N. 42° 47' 01" E.	a distance of 111.03 feet;
N. 60° 39' 37" E.	a distance of 119.26 feet;
N. 30° 17' 47" E.	a distance of 238.18 feet;
N. 48° 47' 07" E.	a distance of 218.69 feet;
N. 28° 45' 37" E.	a distance of 553.16 feet;
N. 47° 52' 47" E.	a distance of 114.77 feet to a point on the San Diego County-

Orange County line as shown on said Record of Survey Map of a portion of Rancho Mission Vieja, said point being a corner of the Rancho Santa Margarita y las Flores bearing S. 0° 03' 48.5" E. a distance of 1999.33 feet from Mission Vieja Corner No. 7, as shown on said Record of Survey Map No. 794; thence S. 43° 21' 38" E. along the boundary line of said Rancho Santa Margarita, a distance of 9720.87 feet to Rancho Santa Margarita Corner No. 14 as shown on said Record of Survey Map No. 794; thence S. 38° 23' 33" E. a distance of 7397.16 feet to Rancho Santa Margarita Corner No. 43, as shown on said Record of Survey Map No. 794; thence S. 10° 11' 13.8" W. a distance of 6790.16 feet to Rancho Santa Margarita Corner No. 48, as shown on said Record of Survey Map No. 794; thence S. 89° 14' 40" E. a distance of 1374.56 feet to a point; thence S. 39° 43' 20" E. a distance of 1023.56

PHOTOGRAPHED BY  
S. WRIGHT JR.  
DEPUTY RECORDER

Exhibit "D"  
DFTS000035

OFFICIAL RECORDS BOOK 1561

1224

feet to a point; thence S.  $43^{\circ} 51' 20''$  E. a distance of 815.97 feet to a point; thence S.  $8^{\circ} 00' 10''$  W. a distance of 797.76 feet to a point; thence S.  $15^{\circ} 41' 50''$  E. distance of 500.12 feet to a point; thence S.  $79^{\circ} 48' 40''$  E. a distance of 1048.65 feet to Rancho Santa Margarita Corner No. 12 as shown on said record of Survey Map No. 794; thence S.  $70^{\circ} 52' 22.37''$  E. a distance of 17,661.96 feet to Rancho Santa Margarita Corner No. 13, as shown on said Record of Survey No. 794; thence S.  $13^{\circ} 37' 05''$  E. a distance of 2983.02 feet to Rancho Santa Margarita Corner No. 14, as shown on said Record of Survey Map No. 794; thence S.  $13^{\circ} 16' 00.64''$  E. a distance of 5102.00 feet to Rancho Santa Margarita Corner No. 15 as shown on said Record of Survey Map No. 794; thence S.  $17^{\circ} 43' 13.46''$  E. a distance of 1622.13 feet to Rancho Santa Margarita Corner No. 16, as shown on said Record of Survey Map No. 794; thence S.  $31^{\circ} 49' 30.6''$  E. a distance of 3275.61 feet to Rancho Santa Margarita Corner No. 17 as shown on said Record of Survey Map No. 794; thence S.  $50^{\circ} 16' 00.32''$  E. a distance of 3227.84 feet to intersection with the partition line as shown on Record of Survey Map No. 903, filed February 14, 1942 in the office of the County Recorder of San Diego County; thence in a general southeasterly direction along said partition line the following courses and distances:

S. $33^{\circ} 44' 13''$ W. a distance of 2436.17 feet;
S. $13^{\circ} 21' 07''$ W. a distance of 1444.78 feet;
S. $79^{\circ} 00' 16''$ W. a distance of 1319.19 feet;
S. $13^{\circ} 36' 15''$ W. a distance of 449.48 feet;
S. $46^{\circ} 23' 10''$ W. a distance of 333.74 feet;
S. $38^{\circ} 44' 10''$ W. a distance of 128.09 feet;
S. $63^{\circ} 19' 40''$ W. a distance of 730.43 feet;
S. $75^{\circ} 43' 13''$ W. a distance of 364.89 feet;
S. $36^{\circ} 44' 10''$ W. a distance of 364.39 feet;
S. $72^{\circ} 07' 10''$ W. a distance of 712.23 feet;
S. $62^{\circ} 36' 26''$ W. a distance of 694.93 feet;
S. $48^{\circ} 48' 47''$ W. a distance of 1427.46 feet;
S. $73^{\circ} 13' 13''$ W. a distance of 418.33 feet;
S. $67^{\circ} 43' 10''$ W. a distance of 444.36 feet;
S. $32^{\circ} 16' 30''$ W. a distance of 364.03 feet;
S. $12^{\circ} 37' 30''$ W. a distance of 433.89 feet;
S. $43^{\circ} 49' 41''$ W. a distance of 948.84 feet;
S. $62^{\circ} 36' 00''$ W. a distance of 220.76 feet;
S. $80^{\circ} 23' 10''$ W. a distance of 1322.88 feet;
S. $34^{\circ} 20' 16''$ W. a distance of 367.09 feet;
S. $0^{\circ} 11' 36''$ E. a distance of 797.26 feet;
S. $19^{\circ} 00' 09''$ W. a distance of 723.06 feet;
S. $42^{\circ} 13' 39''$ W. a distance of 1812.15 feet;
S. $11^{\circ} 12' 14''$ W. a distance of 858.23 feet;
S. $30^{\circ} 14' 21''$ E. a distance of 743.96 feet;
S. $31^{\circ} 26' 21''$ S. a distance of 369.86 feet;
S. $1^{\circ} 14' 41''$ E. a distance of 918.98 feet;
S. $12^{\circ} 13' 10''$ W. a distance of 318.17 feet;
S. $44^{\circ} 01' 30''$ W. a distance of 311.93 feet;
S. $26^{\circ} 39' 20''$ W. a distance of 661.74 feet;
S. $72^{\circ} 06' 50''$ W. a distance of 437.18 feet;
S. $54^{\circ} 14' 30''$ W. a distance of 137.06 feet;
S. $42^{\circ} 07' 00''$ W. a distance of 180.31 feet;
S. $62^{\circ} 24' 10''$ W. a distance of 369.48 feet;
S. $1^{\circ} 43' 10''$ W. a distance of 441.09 feet;
S. $19^{\circ} 38' 50''$ W. a distance of 218.81 feet;
S. $23^{\circ} 11' 50''$ W. a distance of 292.18 feet;
S. $27^{\circ} 16' 01''$ W. a distance of 569.19 feet;
S. $44^{\circ} 20' 10''$ W. a distance of 1183.03 feet;
S. $49^{\circ} 13' 13''$ W. a distance of 1376.37 feet;
S. $89^{\circ} 28' 13''$ W. a distance of 441.07 feet;
S. $76^{\circ} 10' 09''$ W. a distance of 766.63 feet;
S. $83^{\circ} 20' 41''$ W. a distance of 1588.64 feet;
S. $79^{\circ} 42' 10''$ W. a distance of 916.01 feet;
S. $12^{\circ} 18' 09''$ W. a distance of 132.09 feet;
S. $71^{\circ} 05' 23''$ W. a distance of 967.33 feet;
S. $81^{\circ} 48' 41''$ W. a distance of 416.14 feet;
S. $11^{\circ} 22' 30''$ W. a distance of 213.90 feet;
S. $12^{\circ} 27' 11''$ W. a distance of 214.62 feet;
S. $58^{\circ} 19' 13''$ W. a distance of 903.78 feet;
S. $48^{\circ} 01' 04''$ W. a distance of 1896.87 feet;
S. $50^{\circ} 12' 37''$ W. a distance of 3737.47 feet;
S. $82^{\circ} 00' 01''$ W. a distance of 1879.19 feet;
S. $83^{\circ} 24' 14''$ W. a distance of 1441.85 feet;
S. $2^{\circ} 12' 16''$ E. a distance of 1441.85 feet;
S. $58^{\circ} 41' 00''$ W. a distance of 281.56 feet;

PHOTOGRAPHED BY  
 S. WRIGHT JR. DEPUTY RECORDER

Exhibit "D"  
 DFTS000036

11561

S. 1° 35' 00" E. a distance of 101.26 feet  
 S. 12° 11' 10" E. a distance of 171.17 feet  
 S. 20° 07' 25" E. a distance of 491.62 feet  
 S. 13° 34' 37" E. a distance of 633.10 feet  
 S. 1° 11' 05" E. a distance of 1227.03 feet  
 S. 29° 49' 40" E. a distance of 933.63 feet  
 S. 4° 17' 00" E. a distance of 176.09 feet  
 S. 20° 23' 15" E. a distance of 579.09 feet  
 S. 1° 11' 40" E. a distance of 840.09 feet  
 S. 14° 18' 05" E. a distance of 1023.33 feet  
 S. 40° 30' 05" E. a distance of 36.26 feet  
 S. 43° 34' 37" E. a distance of 73.07 feet to

the beginning of a curve concave to the northwest; thence southeasterly along said curve, having a radius of 1450 feet, through a central angle of 8° 30' 49", a distance of 211.43 feet; thence S. 52° 30' 40" E. tangent to said curve, a distance of 266.45 feet; thence S. 37° 29' 14" E. a distance of 76.65 feet; thence S. 30° 31' 33" E. a distance of 1146.15 feet; thence S. 13° 27' 13" E. a distance of 2430.20 feet more or less to the mean high tide line of the Pacific Ocean, being the westerly boundary line of said Rancho Santa Margarita y las Flores; thence northeasterly along the mean high tide line of the Pacific Ocean as shown on said Record of Survey Map No. 774, to the point of beginning. Containing an area of 32,428 acres more or less.

PAGE 11

That portion of the Rancho Santa Margarita y las Flores, in the County of San Diego, State of California, as shown on Record of Survey Map No. 774 filed in the office of the County Recorder of said San Diego County January 17, 1940, bounded and described as follows:

Beginning at the intersection of the southeasterly boundary line of said Rancho Santa Margarita y las Flores, and the mean high tide line of the Pacific Ocean, as shown on said Record of Survey Map No. 774; thence along said southeasterly boundary line, S. 41° 04' 44.66" E. a distance of 31,452.82 feet more or less to Corner No. 1 of said Rancho Santa Margarita y las Flores as shown on said Record of Survey Map No. 774; thence S. 7° 04' 52.90" E. along the easterly boundary line of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 774, a distance of 10,643.78 feet to a point on the southerly line of Section 2, Township 10 south, Range 4 west, as shown on said Record of Survey Map No. 774; thence S. 89° 16' 39" E. a distance of 1,441.12 feet along the southerly line of said Section 2, and Sections 3 and 4, Township 10 south, Range 4 west, to the southeasterly corner of said Section 4, as shown on said Record of Survey Map No. 774; thence S. 0° 47' 13.83" E. along the easterly line of said Section 4, Township 10 south, Range 4 west, and Sections 13 and 20, Township 9 south, Range 4 west, to the corner line of the Santa Margarita River, being also the northwesterly and northerly boundary line of the Naval Ammunition Depot, Fallbrook, through Sections 26, 23, 22, 13 and 10, Township 9 south, Range 4 west, as shown on said Record of Survey Map No. 774, to an intersection with the south line of the northeast quarter of said Section 14; thence easterly along the southerly line of said northeast quarter of Section 14 to a point on the easterly line of said Section 14, as shown on said Record of Survey Map No. 774; thence easterly along the southerly line of the north half of Section 13, Township 9 south, Range 4 west, to an intersection with the easterly boundary of the Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 774; thence S. 7° 04' 52.90" E. along said easterly boundary to corner No. 1 of said Rancho Santa Margarita y las Flores as shown on said Record of Survey Map No. 774; thence S. 89° 29' 24" E. a distance of 1946.09 feet to Corner No. 63 of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 774; thence S. 84° 08' 07.63" E. a distance of 1666.55 feet to corner No. 62 of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey Map No. 774; thence S. 50° 49' 13.46" E. a distance of 7455.95 feet to Corner No.

PHOTOGRAPHED BY S. WRIGHT JR. DEPUTY RECORDER

Exhibit "D"  
 DFTS000037

OFFICIAL RECORD BOOK

1561

730

PHOTOGRAPHED BY S. WRIGHT JR. DEPUTY RECORDER

At of said Rancho Santa Margarita y las Flores, as shown on Record of Survey No. 794; thence S. 37° 18' 13.84" E. a distance of 12,043.32 feet to Corner No. 40 of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey No. 794; thence S. 37° 17' 48.73" E. a distance of 7993.79 feet to Corner No. 39, of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey No. 794; thence S. 30° 17' 33" E. a distance of 1575.19 feet to Corner No. 38, of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey No. 794; thence S. 30° 16' 08.32" E. along the line between Corner No. 38 and Corner No. 37, of said Rancho Santa Margarita y las Flores, as shown on said Record of Survey No. 794 a distance of 3841.78 feet to an intersection with the partition line as shown on Record of Survey No. 903, filed in the office of the County Recorder of San Diego County, thence in a generally southeasterly direction through the Rancho Santa Margarita y las Flores along said partition line, the following courses and distances:

E. 33° 41' 41" W. 1454.19 feet to 43° 21' 07" W. 1444.78 feet;  
S. 78° 00' 26" W. 1319.19 feet; S. 33° 36' 39" W. 449.48 feet; S. 48° 23' 10" E. 333.74 feet; S. 30° 44' 10" W. 326.03 feet; S. 62° 18' 40" E. 290.33 feet; S. 75° 13' 42" W. 354.89 feet; S. 36° 44' 10" W. 366.39 feet; S. 72° 07' 18" E. 712.53 feet; S. 62° 36' 12" E. 894.93 feet; S. 48° 48' 47" W. 3427.40 feet; S. 72° 13' 12" W. 418.33 feet; S. 67° 43' 10" W. 1444.34 feet; S. 72° 46' 30" W. 285.83 feet; S. 12° 37' 40" E. 433.89 feet; S. 45° 41' W. 982.94 feet; S. 82° 38' 30" E. 230.76 feet; S. 60° 23' 18" E. 1322.88 feet; S. 54° 30' 18" W. 347.09 feet; S. 0° 11' 34" E. 757.23 feet; S. 19° 00' 39" E. 723.04 feet; S. 62° 53' 39" W. 1042.33 feet; S. 12° 12' 34" W. 858.33 feet; S. 5° 14' 11" E. 343.98 feet; S. 31° 26' 23" E. 345.80 feet; S. 3° 14' 41" E. 918.92 feet; S. 12° 33' 19" E. 348.37 feet; S. 44° 01' 30" W. 325.93 feet; S. 54° 29' 20" W. 601.94 feet; S. 72° 04' 50" E. 417.18 feet; S. 34° 14' 30" W. 137.08 feet; S. 32° 07' 00" W. 140.34 feet; S. 62° 34' 30" E. 389.48 feet; S. 5° 43' 10" W. 463.09 feet; S. 15° 38' 50" E. 248.83 feet; S. 25° 31' 50" W. 191.18 feet; S. 29° 18' 01" W. 349.33 feet; S. 74° 20' 35" W. 1483.03 feet; S. 49° 31' 33" E. 1376.37 feet; S. 69° 28' 35" E. 463.07 feet; S. 76° 38' 39" W. 766.43 feet; S. 43° 20' 41" E. 1588.66 feet; S. 79° 42' 50" E. 912.01 feet; S. 52° 18' 39" W. 112.09 feet; S. 74° 04' 33" E. 557.53 feet; S. 81° 40' 41" E. 416.34 feet; S. 31° 22' 20" W. 713.80 feet; S. 12° 27° 31" W. 211.62 feet; S. 38° 50' 13" E. 983.78 feet; S. 48° 22' 04" W. 2846.87 feet; S. 34° 31' 37" E. 1757.47 feet; S. 82° 04' 31" E. 1879.19 feet; S. 65° 24' 24" E. 3441.05 feet; S. 2° 22' 58" E. 1441.65 feet; S. 58° 42' 30" W. 231.86 feet; S. 5° 33' 00" E. 203.46 feet; S. 12° 43' 10" E. 173.17 feet; S. 26° 07' 21" E. 691.82 feet; S. 15° 34' 37" E. 833.19 feet; S. 1° 11' 03" W. 1227.02 feet; S. 29° 49' 40" E. 933.63 feet; S. 9° 13' 30" E. 1740.49 feet; S. 20° 25' 55" E. 679.48 feet; S. 3° 11' 40" E. 824.09 feet; S. 14° 18' 03" W. 1633.33 feet; S. 48° 30' 33" W. 38.48 feet; S. 43° 58' 57" E. 73.07 feet to the beginning of a tangent curve curve to the northeast thence southeasterly along said curve, having a radius of 1450 feet, through a central angle of 8° 30' 19" a distance of 211.23 feet; thence S. 32° 30' 44" E. tangent to said curve, a distance of 246.43 feet; thence S. 37° 29' 14" W. a distance of 78.65 feet; thence S. 36° 31' 33" E. a distance of 1146.13 feet; thence S. 13° 27' 13" E. a distance of 3430.20 feet more or less to the mean high tide line of the Pacific Ocean, being the centerly boundary line of said Rancho Santa Margarita y las Flores; thence southeasterly along said mean high tide line of the Pacific Ocean, as shown on said Record of Survey No. 794, to the point of beginning.

Containing an area of 72,200 acres more or less.

Filed  
Recorded/Request of State OCT 1 1943 40 min. past 11 A.M.  
XII 1943 L. M. H. County Recorder  
64873 32 by Deputy J. L. L. L.

Exhibit "D"  
DFTS000038

This is a true certified copy of the record  
if it bears the seal, imprinted in purple ink,  
of the Recorder.

SEP 23 2013

*Annette J. Evans*

Recorder/Courty Clerk  
San Diego County, California

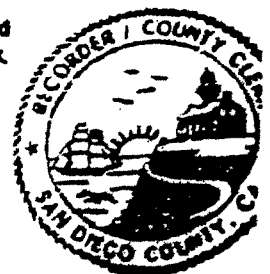


Exhibit "D"  
DFTS000039

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 22nd day of December 2010 and is available for viewing and downloading to the ECF registered counsel of record. This also certifies that on this 22st day of December 2010, a true and correct copy of the within document was forwarded via U.S. Mail, postage prepaid, to the following counsel of record:

Via Electronic Service/ECF and U.S. Mail, postage prepaid:

**Attorney for Plaintiffs:**

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San Diego, California 92130  
Telephone: (619) 297-6900  
Facsimile: (619) 297-6901

DATED: December 22, 2010

MARKS, GOLIA & FINCH, LLP

By: /s/ Mark T. Bennett  
MARK T. BENNETT  
JEFFREY B. BAIRD  
CHAD T. WISHCHUK  
Attorneys for Challenger Sheet Metal,  
Inc., The Augustine Company, Echo Pacific  
Construction, Inc., and Jaynes Corporation of  
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

BRANDON DURAN and BYRON PEDROZA

**DEFENDANTS**

CHALLENGER SHEET METAL, INC., THE AUGUSTINE COMPANY, ECHO PACIFIC CONSTRUCTION, INC., JAYNES CORPORATION OF CALIFORNIA

(b) County of Residence of First Listed Plaintiff San Diego County  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dennis J. Hayes, Esq./Ricardo Ochoa, Esq.

Hayes &amp; Cunningham, LLP

3258 Fourth Avenue

San Diego, CA 92130

Telephone: (619) 297-6900; Facsimile: (619) 297-6901

Attorneys (If Known)

Mark T. Bennett, Esq./Chad T. Wishchuk, Esq.

Marks, Golia &amp; Finch, LLP

8620 Spectrum Center Boulevard, Suite 900

San Diego, CA 92123

Tele.: (858) 737-3100; FAX (858) 737-3101

**'10CV2643 DMS BGS****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus -- Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §§ 1331, 1441

Brief description of cause:

Claims for unfair business parties, violations of Labor Code, injunctive relief and attorneys fees.

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

 CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☐ Yes ☒ No
**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

December 22, 2010

SIGNATURE OF ATTORNEY OF RECORD

Mark T. Bennett, Esq.

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.